Filed 2/4/19 In re R.S. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re R.S. et al., Persons Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. S.P., Defendant and Appellant.	E071293 (Super.Ct.Nos. J268908, J268909, J272895) OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher B. Marshall, Judge. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant.

Michelle D. Blakemore, County Counsel, Svetlana Kauper, Deputy County Counsel, for Plaintiff and Respondent.

I

INTRODUCTION

S.P. (Mother) has a history of abusing drugs, failing to provide for her children's needs, and leaving the children unattended that led to the San Bernardino County Department of Children and Family Services (CFS) removing her five children from her home. Mother's reunification services were terminated and a Welfare and Institutions Code[1] section 366.26 hearing was set. About five months later, Mother filed a section 388 petition, which was summarily denied. Subsequently, the juvenile court terminated Mother's parental rights as to three of her youngest children.

Mother appeals from the order terminating her parental rights to her three youngest sons, Z.S., R.S., and G.S.[2] Mother contends the juvenile court erred in rejecting the beneficial parent relationship exception to adoption under section 366.26, subdivision (c)(1)(B)(i). We find no error and affirm the judgment.

---

[1] All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

[2] Mother's two eldest children are not parties to this appeal.

II

FACTUAL AND PROCEDURAL BACKGROUND[3]

The family came to the attention of CFS on December 20, 2016, when two general neglect referrals were received involving Mother's four older children: then six-year-old X.G., five-year-old J.G., two-year-old Z.S., and eight-month-old R.S.[4] The referrals alleged that Mother left her children home unattended and that she would not feed them. The referrals also alleged that Mother would become intoxicated to the point where she would not care for them and that Mother would scream at the children.

A social worker responded to the referral on December 28, 2016, and met with Mother. Mother, who was the primary caregiver to the children, denied any drug use. However, she appeared to be visibly under the influence. Although she agreed to drug test the next day, Mother failed to show for her drug test.

Mother denied neglecting her four children and claimed the children received appropriate medical and dental care. Neither of the two older children could recall the last time they had seen a doctor or a dentist. The social worker also observed that Z.S. had a makeshift bandage consisting of a napkin and plastic wrap that covered an oozing and bleeding second degree burn on the child's left forearm. Mother initially claimed

---

[3] The factual background up until the denial of Mother's second section 388 petition is taken from Mother's prior appeal in case No. E070153. (See *In re R.S.* (Dec. 6, 2018, E070153) [nonpub. opn].)

[4] C.G. is the father of X.G. and J.G. Z.S. is the father of Z.S., R.S. and G.S. The fathers are not parties to this appeal.

that she sought medical treatment for Z.S., but later admitted that the child received no medical attention for his injury. R.S. appeared malnourished, had a bald spot on the back of his head that appeared flat, and presented with a bloody, scabbed face. Mother posited that R.S. was suffering from psoriasis or eczema but lied about seeking any medical treatment for it. The children were taken to the emergency room at Loma Linda where Z.S. received treatment for his second degree burn, and R.S. received a diagnosis of eczema with the appropriate treatment for his condition. R.S. also tested positive for amphetamines. There was no explanation as to how the drug entered R.S.'s system—whether it was from ingesting the breast milk or if R.S. ingested the substance itself. On December 29, 2016, Mother informed the social worker that she wanted to be truthful and told the social worker that the children were behind on their immunizations. As a result, Mother's two older children—X.G. and J.G.—did not attend school or daycare.

With regard to substance abuse, although Mother initially denied history or current use of any substances, she later admitted that she had used ETOH, methamphetamines, smoked, and consumed alcohol on a weekly basis. Mother initially claimed that she last used drugs two months prior thereto, but later admitted to drinking alcohol and getting drunk when the children were asleep. Mother disclosed that she felt overwhelmed, lacked a support system, grieved the loss of her mother, and struggled with caring for her four children and maintaining the household. Mother asked CFS to take custody of her

four children in order to work on herself and to become a better mother. The children were taken into CFS custody.

On January 3, 2017, CFS filed petitions on behalf of the children pursuant to section 300, subdivision (b) (failure to protect).

At the detention hearing on January 4, 2017, the children were detained and removed from Mother's custody. Mother was ordered to drug test, but failed to show up at the drug testing facility.

The social worker interviewed Mother on January 17, 2017. At that time, Mother admitted to a history of substance abuse including methamphetamines. She stated that the last time she used was in early January when the children were detained. Mother's substance abuse problem was long-standing, dating back to when she was 17 years old. Mother was open, honest in recognizing that she used drugs as a poor coping strategy, and was agreeable to treatment. Mother also disclosed an extensive history of domestic violence with one of the children's fathers. She acknowledged that she neglected some of the children's needs; for example, she failed to seek medical help for R.S.'s rash and that the older children were behind on their immunizations and were not enrolled in school. Mother explained that she was the only caregiver to the four young children and that she was overwhelmed and "extremely isolated." She believed CFS's involvement was in the children's best interest as she was aware she needed to make changes.

The jurisdictional/dispositional hearing was held on January 25, 2017. Mother waived her constitutional rights and submitted on the jurisdiction and disposition. The

juvenile court found the allegations in the petitions true and declared the children dependents of the court. Mother was provided reunification services and ordered to participate. Mother's case plan required Mother to participate and complete individual counseling, a parenting class, an outpatient substance abuse program, a 12-step program, and randomly drug test. Mother's therapy goals included developing an ability to be a protective parent and to place the children's needs first. The therapy sessions were to continue until the treatment goals were achieved. Mother's reunification service objectives included developing a positive support system with friends and family, maintaining a stable and suitable residence, meeting the children's physical, emotional, medical, and educational needs, and monitoring the children's health, safety and well-being.

By the six-month review hearing, CFS recommended terminating Mother's reunification services. Despite being referred to services and meeting with the social worker multiple times to discuss her case plan, Mother failed to follow through with the services or to make progress. After having participated in eight sessions of individual counseling and nine sessions of parenting classes, she was terminated for "'excessive absences,'" and therefore, she never completed either program. Mother also failed to attend her substance abuse program and was discharged from that program as well. In addition, it was unclear if Mother had been sober for any period of her reunification services because she repeatedly failed to drug test for at least three months. Mother even appeared to be under the influence during some of the visits with her children. Moreover,

Mother was pregnant with her fifth child (G.S.) and informed the social worker she would not be able to care for her other children because she wanted to focus on her new child.

On July 25, 2017, Mother set the matter contested on the issue of termination of services, and the six-month hearing was continued to October 4, 2017. Mother was ordered to drug test, but again failed to comply.

CFS continued to recommend that Mother's services be terminated. In September 2017, while still in reunification services with the older four children, Mother gave birth to her fifth child, G.S. Although Mother tested negative for substances at G.S.'s birth, she admitted that she had used methamphetamines during her pregnancy with her most recent use a week before G.S.'s birth in September 2017. Mother later advised the social worker that she had lied about her last use being in September 2017 because she had hoped to be a "'priority'" candidate for a bed in an inpatient program if she were pregnant and using. Mother claimed that in actuality she had last used in August 2017 and that was why she had not tested positive at G.S.'s birth. Mother acknowledged that she had an open CFS case with her other four children and that they were removed because of her substance abuse. She also admitted that she was not compliant with her reunification plan ordered for her four older children, but informed the social worker that she was planning to enroll in an inpatient substance abuse program upon discharge from the hospital.

On September 19, 2017, CFS filed a petition on behalf of G.S. pursuant to section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling).

At the detention hearing the following day on September 20, 2017, G.S. was removed from parental custody. Mother was ordered to drug test and was advised that failure to comply with the drug test would be considered a positive test.

On September 21, 2017, Mother tested positive for opiates.

The contested six-month review hearing regarding the four older children was held on October 4, 2017. At that hearing, Mother's counsel requested additional services for Mother, arguing Mother's lack of participation in services was due to the fact that Mother had recently given birth to her fifth child and had "a very difficult pregnancy with a lot of health issues that impeded [Mother's] ability to participate fully in the case plan." CFS's counsel pointed out that Mother had not completed any component of her case plan, she had continued to fail to drug test, and she had tested positive as recently as September 2017. CFS's counsel also asserted that Mother had not even visited the children in the month of August. Following argument, the juvenile court terminated Mother's services and set a section 366.26 hearing. A plan of legal guardianship was proposed for X.G. and J.G. while an adoption was recommended for Z.S. and R.S.

On October 6, 2017, in regard to G.S.'s case, CFS recommended that the allegations in G.S.'s petition be found true and that Mother be provided with reunification services. Mother was enrolled in an intensive outpatient prenatal drug treatment program through Inland Behavioral Health Services.

However, on October 11, 2017, CFS recommended that no reunification services be provided to Mother in G.S.'s case pursuant to section 361.5, subdivision (b)(10). CFS noted that Mother's services for her other four children had been terminated on October 4, 2017, and Mother had tested positive for opiates.

The contested jurisdictional/dispositional hearing in G.S.'s case was held on November 17, 2017. At that time, the juvenile court found the allegations in G.S.'s petition true and declared G.S. a dependent of the court. The court denied Mother reunification services pursuant to section 361.5, subdivision (b)(10), and set a section 366.26 hearing.

In a report dated January 24, 2018, CFS noted that Mother had not been consistent in visiting the children or maintaining contact with her four children. The social worker also reported that R.S. was diagnosed with "Posttraumatic Stress Disorder Unspecified" (PTSD), and was receiving Inland Regional services for his developmental delays. He was also participating in "continued specialized instruction ABC interventions" once a week for 60 minutes. Z.S. was enrolled in a preschool program, but had exhibited some behavioral difficulties by failing to follow directions, being disruptive and screaming at teachers. X.G. was participating in services at Phoenix Clinic. R.S. and Z.S. were placed together in a foster family home while J.G. and X.G. were placed in a different foster family home. CFS held a matching meeting with a prospective adoptive family, but needed additional time to locate a concurrent planning home for the four children. CFS had identified an adoptive home for G.S. and recommended termination of parental rights

in G.S.'s case. Although the children were placed in three different foster homes, the children were happy and bonded to their respective foster families.

On January 30, 2018, Mother (in propria persona) filed a section 388 petition on behalf of all five children. She claimed that she had "completed what was asked of [her] when [she] had CFS services." Although she failed to attach any supporting documents, she contended that "[she had] certificates & letters." In regard to the best interest of the children, Mother stated that the children wanted to return to her and that she was their mother. Mother requested additional services and increased sibling visits.

The court heard Mother's section 388 petition on February 1, 2018. At that hearing, Mother's counsel acknowledged that Mother had filed the section 388 petition "on her own." Mother's counsel also stated that Mother had failed to attach any supporting documentation, but noted that Mother was engaged in an outpatient treatment program and had "two or three weeks" remaining to complete the program. Mother's counsel further asserted that Mother had claimed that she was engaged in counseling, but "she [didn't] have proof of that." Mother's counsel asked the court to deny Mother's section 388 petition without prejudice. The juvenile court denied Mother's section 388 petition, finding the request did not state new evidence or a change of circumstances and that granting the petition was not in the children's best interest.

On March 6, 2018, Mother (in propria persona) filed a second section 388 petition with supporting documents. In her petition, Mother sought custody of her five children, or in the alternative, a grant of additional reunification services along with unsupervised

visits, overnights, and weekends. Mother contended that "[she had] completed what was asked of [her]." She enrolled in a substance abuse class at Inland Valley Recovery Services (IVRS) which she completed on February 13, 2017[5]; she drug tested randomly and attached one drug test result to her section 388 petition; she enrolled in an aftercare drug treatment program at IVRS where she was allowed "to vent with other peeps"; she enrolled in a parenting class on March 1, 2018; she had engaged in therapy since October 13, 2017; and provided an "N/A meeting attendance sheet" showing she had attended 36 meetings. Mother believed that changing the prior court orders were in the children's best interest and enumerated multiple reasons which ranged from her claims of finally being sober to expressing her love for her children, to claiming they expressed a desire to come home, and to wanting another chance "to reunify with [her] 5 amazing children." To support her position, Mother attached, among other documents, an undated letter from her therapist that identified Mother's treatment goals as "to increase overall feelings of self-worth, increase confidence in her ability to be a stable parent for her children, and to develop the skills necessary to be an emotionally and physically available mother." Mother also attached two letters of recommendation from her father and brother.

In a report dated March 6, 2018, in regard to G.S.'s case, the social worker noted that Mother had been inconsistent with attending visitations. G.S.'s caretaker reported

[5] The attached certificate of completion was dated February 13, 2018.

that the parents would schedule visitations and then cancel last minute. When they would attend about once a month, they focused their attention on G.S.'s brothers.

On March 7, 2018, the juvenile court summarily denied Mother's section 388 petition, finding no new evidence or a change of circumstances and granting the petition was not in the children's best interest.

On March 15, 2018, Mother filed a timely notice of appeal challenging the denial of her second section 388 petition without a hearing.

On December 6, 2018, this court affirmed the juvenile court's order denying Mother's second section 388 petition. (See *In re R.S.*, *supra*, E070153.)

G.S.'s prospective adoptive parents were committed to adopting G.S. and providing him with permanency. They had surrounded G.S. with love and support, and G.S. looked to his prospective adoptive parents for "warmth and comfort." In their caregiver form filed with the court, G.S.'s prospective adoptive parents asked that G.S. "be placed with [their] family for permanent adoption."

Z.S. and R.S. were also placed in a concurrent planning home with prospective adoptive parents on March 12, 2018. Z.S. and R.S. were generally in good health and had started to develop a close bond with their caregivers. Z.S. and R.S. continued to receive services. R.S.'s services focused on developmental delays, while Z.S.'s services addressed aggression and defiance. By May 2018, the prospective adoptive parents considered Z.S. and R.S. a part of their family. In return, the children exhibited a secure attachment to their caregivers and shared a close, loving relationship with their new

parental figures. Moreover, the children's defiant behaviors had improved, and they looked to their prospective adoptive parents for love, support, and attention. The prospective adoptive parents described their relationship with the children as that of parent-child. They had provided daily care for the children, played with them, read to them, taught them right from wrong, and loved them.

In addition, by May 2018, Mother had attended "all scheduled visits" with R.S., Z.S., and G.S. twice a month for two hours. The social worker who had supervised several visits in April 2018 noted that Mother was appropriate with the children and "[made] a great effort at engaging the children throughout the visit." Z.S. reportedly was happy to see Mother at visits and would run to her to give her a hug on arrival. R.S. would follow his brother's lead. Mother held G.S. while she played and engaged with Z.S. and R.S. Mother was also observed playing on the floor with the children. When she was not busy with the other children, Mother also fed and talked to G.S. Occasionally, Mother had to be reminded to check or change R.S. and G.S.'s diapers.

In July 2018, the social worker observed "a close parent-child bond" between Z.S. and R.S. and their prospective adoptive parents. Further, the children appeared happy in their new placement. Moreover, Z.S. exhibited a marked difference in his behavior from the last placement, and Z.S. was described as "well-behaved."

The contested section 366.26 hearing was held on July 27, 2018. At that time, Mother testified that Z.S. was a "very, very friendly boy," and characterized him as "nice" and "comfortable with [her]." Mother admitted that Z.S. was "very young . . . a

baby in a sense that he was just—he just turned two" when he was removed from her care. Mother also stated that Z.S. called her "Mom" and he still recognized her. In regard to R.S., Mother explained that the child was only eight months old when he was removed, but that he "still" remembered her. Mother believed that she had a bond with R.S. Mother also believed that G.S. recognized her when he saw her, although she admitted that the child had been removed at birth, and never lived in Mother's care. Mother recounted observations "when [G.S.] can't see [her], he will start, like, crying or panicking." Mother further elaborated on her relationship with G.S., stating: "And I feel like that's just like something—like a bond, you know. . . . And I feel like he knows me and he feels okay with me, you know . . . ."

Mother also asserted that she made it to almost every visit, except for when she had "car troubles, so there was a few times [she] did miss [a visit]." Mother admitted that her visits were inconsistent at times, however, she believed she had attended 80 percent of her visits, noting "a good 30 percent" she had missed were the result of "car trouble, transportation issues, stuff like that." During the visits, Mother explained that she brought toys and food and played with the children.

Following testimony, the juvenile court heard argument from the parties. CFS's counsel and minors' counsel argued for termination of parental rights, noting the children were adoptable, had not resided with Mother for almost two years, were very young at removal, and showed no evidence Mother had acted in a parental capacity since the children's removal. Father's counsel argued that Z.S. was not adoptable because he

showed aggressive and defiant tendencies and acted out. Mother's counsel believed all three children shared a sibling bond, as well as, the parent-child bond with Mother, especially Z.S. and R.S., and therefore believed exceptions to adoption applied.

After weighing Mother's credibility and considering Mother's testimony and the social workers' reports, the juvenile court found the parental beneficial exception did not apply. In the court's view, the children were generally and specifically adoptable. The court noted that although Mother undoubtedly loved her children, she failed to meet her burden in showing that "severing that natural parent/child relationship would deprive the children of a substantial positive emotional attachment such that the children would be greatly harmed." The court concluded that the benefits of adoption outweighed any potential detriment, terminated parental rights, found the children adoptable, and freed Z.S., R.S., and G.S. for adoption.

On September 6, 2018, Mother filed a timely notice of appeal.

III

DISCUSSION

Mother contends the juvenile court erred in declining to apply the beneficial parental relationship exception to termination of her parental rights. We disagree.

"At a section 366.26 hearing, the juvenile court selects and implements a permanent plan for the dependent child." (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1299 (*Noah G.*).) At that stage of the proceedings, the preferred plan for the dependent child is adoption. (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 645 (*Breanna S.*).) "If

there is clear and convincing evidence that the child will be adopted, and there has been a previous determination that reunification services should be ended, termination of parental rights at the section 366.26 hearing is relatively automatic." (*In re Zacharia D.* (1993) 6 Cal.4th 435, 447.)

After reunification services are denied or terminated, "'the focus shifts to the needs of the child for permanency and stability.'" (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) Adoption is preferred once reunification services have been terminated and, "adoption should be ordered unless exceptional circumstances exist." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51 (*Casey D.*).) Under section 366.26, subdivision (c)(1)(B)(i), one such exception exists where "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (See *Noah G., supra*, 247 Cal.App.4th at p. 1300.) A beneficial relationship is established if it "'promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.'" (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534, quoting *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*).)

The parent has the burden of proving the statutory exception applies. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) The parent must show both that a beneficial parental relationship exists and that severing that relationship would result in great harm to the child. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 (*Jasmine D.*); *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1207.) "'[T]he court balances the

strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.' [Citation.]" (*In re C.F.* (2011) 193 Cal.App.4th 549, 555 (*C.F.*).)

Courts consider "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs." (*Autumn H., supra,* 27 Cal.App.4th at p. 576.) "A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption. [Citation.] No matter how loving and frequent the contact, and notwithstanding the existence of an '"emotional bond"' with the child, '"the parents must show that they occupy 'a parental role' in the child's life."'" (*Breanna S., supra*, 8 Cal.App.5th at p. 646; *Noah G., supra*, 247 Cal.App.4th at p. 1300 ["Evidence of frequent and loving contact is not enough to establish a beneficial parental relationship. [Citations.] The mother also must show she occupies a parental role in the children's lives"].) "Moreover '[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement.'" (*Breanna S.*, at p. 646; accord *Jasmine D., supra*, 78 Cal.App.4th at p. 1350; *Casey D., supra*, 70 Cal.App.4th at p. 51.)

In reviewing challenges to the juvenile court's decision as to the applicability of an exception to adoption, we employ the substantial evidence or abuse of discretion standard of review, depending on the nature of the challenge. (*In re J.S.* (2017) 10 Cal.App.5th 1071, 1080.) We "apply the substantial evidence standard of review to evaluate the evidentiary showing with respect to factual issues," such as the existence of a beneficial parental relationship. (*Ibid*.) However, given the existence of a beneficial parental relationship, we review for an abuse of discretion the juvenile court's determination as to whether termination of parental rights would be detrimental to the child as weighed against the benefits of adoption. (*Ibid*.; see *Noah G.*, *supra*, 247 Cal.App.4th at p. 1300; *Breanna S.*, *supra*, 8 Cal.App.5th at p. 647.) Such decisions are "'"quintessentially discretionary."'" (*In re J.S.*, at p. 1080.) "In the dependency context, both standards call for a high degree of appellate court deference." (*Ibid*.)

It is undisputed that R.S., Z.S., and G.S. would be adopted within a reasonable time. However, the parties dispute whether Mother maintained regular visitation and contact with the children. Mother asserts that "the court implicitly found that mother met the first prong of the exception, the regular visitation." CFS responds that "Although the record is silent on the court's making the express finding, the evidence at trial does not support such reading even implicitly." CFS, however, admits that Mother maintained regular visitation and contact with the children by May 2018.

The record discloses that Mother's visitation with Z.S. and R.S. was inconsistent throughout the dependency proceedings. Z.S. and R.S. were removed from Mother's

care at her request in December 2016 when the children were two years old and eight months old, respectively. At the January 2017 jurisdictional/dispositional hearing, the juvenile court ordered Mother's visits to be supervised a minimum of one time per week for two hours. Mother acknowledged that she failed to attend all scheduled visits with Z.S. and R.S. Initially, she excused her failure to regularly visit Z.S. and R.S. due to a difficult pregnancy with G.S. and health issues. Later, Mother blamed her inconsistent visits on having "car trouble, transportation issues, stuff like that." In addition, in July 2017, if Mother did attend visits, she appeared to be under the influence during some of them. Mother missed visits with Z.S. and R.S. for the entire month of August 2017. In October 2017, the court reduced Mother's visits to supervised visits twice a month for two hours. By February 2018, CFS continued to report that Mother was inconsistent in her contact with Z.S. and R.S. and that she did not visit the children regularly. However, as CFS acknowledges, Mother's visits with the children improved by May 2018 when Mother began to attend "all scheduled visits" with the children twice a month for two hours. Accordingly, the record shows that Mother maintained consistent visits with Z.S. and R.S. from approximately March 2018 until July 2018, about five months out of the total 19 months Z.S. and R.S. had been out of Mother's custody. This is insufficient to show Mother maintained consistent and regular contact with Z.S. and R.S. Mother's sporadic visits did not warrant applying the beneficial parent-child exception as to Z.S. and R.S. (*C.F.*, *supra*, 193 Cal.App.4th at p. 554 ["Sporadic visitation is insufficient to satisfy the first prong" of the exception.].)

By comparison, Mother's visits with G.S. appeared to be more consistent. G.S. was removed at birth. At G.S.'s detention hearing, the court ordered supervised visits for Mother once a week for two hours with authority for more frequent visitation. Mother visited G.S. consistently pending the jurisdictional/dispositional hearing held in October 2017. After the jurisdictional/dispositional hearing in November 2017, Mother's visits were decreased to supervised visits twice a month for two hours. By March 2018, Mother inconsistently visited G.S. on an average of once a month. However, by May 2018 until the July 2018 section 366.26 hearing, Mother attended all scheduled visits with G.S. Accordingly, the evidence appears to support Mother's claim that she consistently visited and maintained regular contact with G.S.

Nonetheless, although it cannot reasonably be disputed that Mother loves her children, Mother cannot show her relationship with the children outweighed the well-being the children would gain through the permanency of adoption. (*Noah G.*, *supra*, 247 Cal.App.4th at p. 1300.) As discussed below, we conclude the juvenile court did not abuse its discretion in finding Mother did not make this required showing.

Z.S. and R.S. were only two and eight months old, respectively, when they were removed from Mother's care. In her testimony, Mother admitted that Z.S. and R.S. were "very young" when they were removed from her care. Both children had been out of Mother's care for approximately 19 months, during which time Mother did not occupy a parental role in the children's lives. Z.S. had been out of his mother's care for almost half his life, and R.S. had been out of his mother's care for more than half of his life.

During all these months, Mother was absent from their young lives, while the children's foster parents and, later, their prospective adoptive parents tended to the children's everyday needs. Although Mother re-engaged in the children's lives sometime in February or March 2018 and the children were reportedly happy to see her and Z.S. called her "mom," "'the emotional attachment between the child and parent must be that of parent and child rather than one of being a friendly visitor or friendly nonparent relative, such as an aunt.'" (*In re Jason J.* (2009) 175 Cal.App.4th 922, 938.) "'A biological parent who has failed to reunify with an adoptable child may not derail adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may *be beneficial to some degree*, but that does not meet the child's need for a parent.' [Citation.]" (*Id*. at p. 937.) Even a "loving and happy relationship" with a parent does not necessarily establish the statutory exception. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.) In short, Mother failed to show she occupied a parental role in the children's lives. As noted above, "[n]o matter how loving and frequent the contact, and notwithstanding the existence of an '"emotional bond"' with the child, '"the parents must show that they occupy 'a parental role' in the child's life."'" (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 646; *Noah G.*, *supra*, 247 Cal.App.4th at p. 1300.) The relationship that gives rise to this exception to the statutory preference for adoption "characteristically

aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship." (*Casey D.*, *supra*, 70 Cal.App.4th at p. 51.)

Furthermore, while there was evidence of successful visits between the children and Mother, it was insufficient to outweigh the benefits of finally providing the children with permanency and stability. There was no evidence that the children would be harmed, much less "greatly harmed," by termination of parental rights. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1234-1235.) In fact, the evidence supports a reasonable conclusion that the children would gain a greater benefit from being placed in a permanent adoptive home. Mother simply cannot meet her burden of showing that the bond between her and the children was so strong and beneficial to the children that it outweighed the benefit the children would receive from having a stable, permanent adoptive home. As previously noted, the children were very young when they were removed from Mother's custody. G.S. was never placed in Mother's custody.

Moreover, Mother never obtained unsupervised visits with the children. The children were placed in adoptive homes with prospective adoptive parents who were committed to adopting the children and providing them with the security and stability the children required. The children developed close parent-child attachments to the prospective adoptive parents, and the prospective adoptive parents were committed to providing for the children and their needs. Prior to the placement with the prospective adoptive parents, R.S. was diagnosed with PTSD and was receiving services for his

developmental delays. Similarly, Z.S. had exhibited some behavioral difficulties and was receiving services. After being placed in their prospective adoptive home, Z.S. and R.S. had shown marked improvements in their behavior and appeared happy in their prospective adoptive home. Similarly, G.S. was immediately embraced by his prospective adoptive family. Two and a half months after his placement, G.S.'s prospective adoptive family provided G.S. with love and support, and G.S. looked to his prospective adoptive parents for "warmth and comfort." On the other hand, Mother had not demonstrated an ability to provide the children with a stable, safe, and loving home environment. As a result, despite Mother's consistent and positive visits with the children, we conclude the juvenile court did not abuse its discretion in finding the benefits of adoption outweighed any detriment the children might experience as a result of termination of Mother's parental rights.

Mother's reliance on *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*) is unhelpful. There, unlike here, the father maintained consistent, positive visitation with his daughter. The sole issue was whether he occupied a parental role in her life. In concluding that he did, the appellate court relied on circumstances that simply are not present in this case. Unlike Mother, the father in *S.B.* was his daughter's primary caregiver for three years, which was well over half of her life. (*Id*. at pp. 293, 298.) In addition, a bonding study revealed a "'fairly strong'" bond between the father and his daughter—one that was reflected during visits when she would nestle into his neck and whisper that she loved him and missed him and wanted to live with him. (*Id*. at pp. 295, 298.) Finally, the

father had complied with "'every aspect'" of his case plan, "immediately" obtaining and maintaining sobriety and seeking medical and psychological services as soon as his daughter was removed from his care. (*Id.* at p. 298.) Here, not only were R.S., G.S., and Z.S. too young to express opinions about where they wanted to live, but, more importantly, Mother's efforts to comply with her case plan fall drastically short of the father's in *S.B.* And it is precisely those efforts—to overcome the issues that led to the dependency—that demonstrate a biological parent is ready and willing to assume a parental role.

Moreover, *S.B.* is "confined to its extraordinary facts." (*C.F.*, *supra*, 193 Cal.App.4th at p. 558.) The same court that decided *S.B.* later stated that *S.B.* "does not support the proposition a parent may establish the parent-child beneficial relationship exception by merely showing the child derives some measure of benefit from maintaining parental contact. As [*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575] points out, contact between parent and child will always 'confer some incidental benefit to the child,' but that is insufficient to meet the standard. [Citation.]" (*C.F.*, at pp. 558-559.)

Mother also relies on *In re C.B.* (2010) 190 Cal.App.4th 102 (*C.B.*), but that case is inapposite. In *C.B.*, "the juvenile court implicitly found that there was substantial, positive emotional parent-child attachment despite the lack of day-to-day contact," and also included that the benefits of adoption outweighed the benefits of the parental relationship. (*Id.* at p. 126.) Because the juvenile court's conclusion was "based, at least in part, upon the expectation that the children's aunt and uncle would permit the children

to have continued contact with mother after they were adopted," the appellate court reversed and remanded the matter to the juvenile court. (*Id*. at p. 127.)

In addition, the children in *C.B.* were older. (*C.B.*, *supra*, 190 Cal.App.4th at p. 126.) At the time of the section 366.26 hearing, the children were 9, 10, and 17 years old. The *C.B.* court found that the children "were 'of an age where they are intellectually and emotionally aware of whom their parents are.'" (*Id*. at pp. 113, 115, 117, 126.) The children testified that "'they would be "mad" and "sad" if they were not able to have contact with their mother . . . .'" (*Id*. at p. 126.) The *C.B.* court noted that the juvenile court had observed that the "'children know their parents as their parents' and 'view [them] as their parents.'" (*Ibid*.) No such evidence exists in the instant case. Further, the juvenile court did not improperly consider "the prospective adoptive parents' willingness to allow the children to have continued contact with mother." (*Id*. at p. 128.) Thus, *C.B.* does not help Mother.

In sum, the totality of evidence shows that there would be no significant detriment in terminating Mother's parental rights. At the time of the section 366.26 hearing, Mother did not hold a parental role or have a substantial, positive emotional attachment such that the children would be greatly harmed by termination of parental rights. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) We conclude that the juvenile court did not err in rejecting the parental beneficial relationship exception to adoption.

IV

DISPOSITION

The juvenile court's order terminating Mother's parental rights to R.S., Z.S. and G.S. is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

RAMIREZ
P. J.

SLOUGH
J.